

PBT Advisory Committee Meeting Notes December 14th, 2004

The sixth and final meeting of the PBT Rule Advisory Committee was held on December 14th, 2004 in Tacoma, Washington. The meeting was held at the Columbia Bank Building. A copy of the meeting agenda is included as Attachment 1* on the Ecology PBT Rule web page (for December 14th).

The following advisory committee members attended the meeting:

Kate Davies (for Steve Gilbert), Institute of Neurotoxicology and Neurological Disorders
Nancy Dickeman (for Kate Davies), Physicians for Social Responsibility
Diana Graham, American Chemistry Council
Pete Hildebrandt, Washington State Petroleum Association
Llewellyn Matthews (for Jeff Louch), NW Pulp and Paper Association
Mo McBroom, WashPIRG
Grant Nelson, Association of Washington Businesses
Randy Ray, Pacific Seafood Processors Association
Gary Smith, Independent Business Association
Pam Tazioli, The Breast Cancer Fund
Laurie Valeriano, Washington Toxics Coalition

Ecology staff presenting information during the committee meeting:

Dave Bradley, Department of Ecology
Mike Gallagher, Department of Ecology
Greg Sorlie, Department of Ecology
Ted Sturdevant, Department of Ecology

The following representatives from government agencies signed in:

Rob Duff, Department of Health
Rick Manugian, Department of Ecology
Pat Springer, EPA Region 10
Ann Wick, Washington State Department of Agriculture

Additional stakeholders and members of the public also signed in:

Jeremy Brown, Western Fishboat Owners Association
Matthew Cacho, Healthy Building Network
Bruce Herbert, Newground Social Investment
Joel Kawahana, Washington Trollers Association
Janet Primomo, University of Washington Tacoma
Marc Greenburg, American Chemistry Council

Marc Daudon facilitated the meeting and Marley Shoaf took notes.

Meeting Overview and Purpose

Marc Daudon welcomed the advisory committee members to the final PBT Rule meeting. He explained that the purpose of the meeting was to review and comment on Ecology's final draft PBT Rule. Marc reviewed the process guidelines and ground rules.

Greg Sorlie explained that Ecology has worked to incorporate advisory committee comments throughout the PBT Rule process. He explained that if members have compelling changes to the draft Rule presented at the meeting, they can submit comments and suggested changes to Ecology by Friday, December 17th.

Mike Gallagher reviewed Ecology's activities since the November advisory committee meeting. He said that Ecology has received written comments from several groups and individuals: the Washington Toxics Coalition, the Association of Washington Businesses, WashPIRG, Diana Graham, Gary Smith (IBA), and Brian Rhodes (Shell). Ecology also had meetings with the Association of Washington Businesses, the Washington Toxics Coalition, WashPIRG, and People for Puget Sound. Mike explained that Ecology met several times in the past month to incorporate advisory committee comments into the final draft PBT Rule which will be sent to the Governor the week of December 20th.

A committee member asked Randy Ray if he was representing the American Chlorine Council at the advisory committee meetings. Randy explained that the American Chlorine Council is one of his (AEQUUS Corporation) clients; however, he explained that he is not representing them in this PBT Rule process.

Draft Rule Revisions

Ecology electronically distributed the draft Rule revisions to committee members during the previous week. A copy of the revisions (strike through copy) and a copy of the revised PBT draft Rule are included as Attachment 2* and Attachment 3*. Mike distributed and reviewed a summary comparison of the key changes that Ecology made to the draft PBT Rule (Attachment 4*).

The revised Rule includes a new Introduction (100) section and revised language in the Purpose section (110) to establish coordination with the Department of Health (DOH). Ecology made no major changes to the Applicability section (120). Ecology deleted the Chapter Summary section (previously 120), added minor word changes to the Exemptions section (130), and made several changes to both the Administrative Principles section (140) and the Definitions section (200). Ecology also made revisions to the Purpose of the PBT List section (300), added the PBT chemical list to the PBT List section (310), and updated the PBT Criteria section (320). Ecology also added new sections to the Rule: Adding and Removing PBTs on the List (320 and 330), Revising the PBT List (340), and section 400 titled "What is a CAP." In addition, Ecology revised and added language to the CAP Selection Factors section (410), CAP Contents section (420), and the CAP Process section (430). Attachment 4* details the key changes made to the PBT Rule as well as Ecology's rationale for the changes.

Dave Bradley presented the committee with a summary of the approach Ecology used for selecting chemicals for the initial draft PBT list (Attachment 5*) and a summary of the technical background information (Attachment 6*) that was used to comprise the list. Dave explained that the PBT list was created by: 1) Compiling the chemicals to which Ecology assigned a score of 9 under the Waste Minimization and Prioritization Tool (WMPT), 2)

Removing exempted pesticides, 3) Combining chemicals into their chemical groups (e.g., PAHs), and 4) Combining information on persistence, bioaccumulation, and toxicity characteristics. Ecology also reviewed the quality and quantity of information on the chemicals' characteristics, as well as advisory committee comments before compiling the final draft PBT list. Dave explained that Ecology will continue to work on the PBT list for the next several months. Ecology will review comments on the proposed PBT list and continue to compile information on chemicals. Advisory committee comments on the PBT list are due to Ecology by March 15th.

Questions of clarification:

Advisory committee members had the following clarifying questions:

- Did more chemicals drop off of the original WMPT list of 175 chemicals because chemicals were grouped or because of the lack of quality and quantity of data? Dave explained that about half of the chemicals dropped off the list due to chemical groupings and the exemption for registered pesticides and the other half dropped off of the list because of a lack of data on the chemicals. Dave explained that there are still chemicals for which very little information exists.
- Can Ecology send the Technical Background Information document electronically?
ACTION ITEM: Ecology will send an electronic version of the document to advisory committee members.
- When will the formal rulemaking process begin? Ecology said that they will need to file a CR102 in late March and the decision as to when the formal rulemaking process will start will be made in January or February.

Advisory committee members had the following overall comments on the revised draft PBT Rule:

- **Ecology has done a great job.** Advisory committee members commended Ecology for the work they have done on the PBT Rule. Members said that Ecology has done a great job of taking many different opinions into consideration and balancing them in the final draft Rule.
- **Rule should be consistent with a procedural rule.** One member said that Ecology needs to ensure that the Rule is consistent with a procedural rule and that Ecology needs to take a look at places in the Rule that are inconsistent with a procedural rule.
- **Categorization of chemicals on the PBT list is important.** A few members appreciated Ecology's efforts to establish categories for the PBT list.
- **Introduction does not capture the goal of the PBT Strategy.** Some members questioned the usefulness of the current introduction and said that the introduction needs to capture the goals of the PBT Strategy.
- **Parts of the Rule are vague.** One member was concerned that since the Rule has been pared down, the portions that are still vague may become magnified.
- **Including DOH is important.** Some members liked the addition and specific mention of coordination with DOH in the Rule.
- **The Precautionary Principle should be applied.** One member said that the Precautionary Principle should be applied more throughout the PBT Rule.
- **Food processors have not been included in the process.** One member said that he was unhappy with the PBT process and said that since food producers are the transport mechanisms between chemicals and humans, they should not be left out of the

rulemaking process; he said that the PBDE and Mercury CAP processes were disasters because food processors were not adequately represented.

Rob Duff said that DOH was involved in the Mercury CAP and is involved in the PBDE CAP and that DOH spends half of their time working on consumer messages regarding fish. He said that DOH's messages encourage the public to eat fish and how to choose the healthiest fish to eat.

Part I - General Provisions

Advisory committee members had the following comments on Part I of the revised PBT draft Rule:

- **What is the scope of the Rule?** One member said that the current scope of the Rule includes protecting wildlife and the environment and he said that Ecology needs to choose an indicator. He said that Ecology may be headed in the wrong direction by including wildlife in the Rule because they should focus on chemicals that affect humans. He said that the scope of the Rule is broader than it should be. One member disagreed and said that PBTs are problematic because they build up in humans and wildlife and it is important to mention wildlife in the Introduction.
- **The goal of Rule should be changed in the Introduction section.** Some members said that the goal language in the Introduction should be changed to "the goal of this chapter is to establish a process." Another member said that the language should be "the goal of this chapter is to protect human health and environment," and that Ecology should remove the "manage and eliminate" language.
- **The introduction should reflect the larger issue of PBTs.** One member said that the Rule needs to clearly state that the PBT Rule is just one piece of a larger issue and effort surrounding PBTs. Ecology said that they tried to highlight the broader scope of the PBT efforts in the second paragraph of the Introduction.
- **Ecology should say that the PBT Rule is a cross-media approach.** One member said that existing PBT efforts are for single media and that Ecology should highlight in the Introduction that the PBT Rule is a cross-media approach for dealing with PBTs.
- **The Rule does not establish regulatory action.** One member said that regulatory action should not be added to the introduction. He said that regulatory actions may come out of the CAP process, but even the CAP process only recommends regulatory action, it does not establish it.
- **How is sound public policy determined?** One member asked how Ecology will determine the definition of sound public policy. Ecology explained that sound public policy is included in the Administrative Principles section because it is necessary to consider good public policy with scientific information. One member suggested that sound public policy may not fit under a definition of scientific information, but that the concept of having sound public policy and credible scientific information is important.

Ann Wick clarified that if the EPA does not renew a pesticide's registration, the Department of Agriculture will support Ecology's decision to add the pesticide to the PBT list.

Part II - Definitions

Advisory committee members had the following comments on the revised Definitions section:

- **The carcinogen definition has been greatly improved.** One member said that the revised definition for carcinogen is better than the previous definition. Another member pointed out that Ecology does not need a definition for carcinogen because the word is not used anywhere in the Rule. One member said that since carcinogen is used in the Technical Background Information document, it should be included in the Definition section.
- **"Sensitive population" should be separated into two definitions.** One member pointed out that sensitive populations and high risk populations should be separated into two definitions. She said that one definition is for sensitive populations and the other is for high risk populations. Several members agreed that the definitions should be separate.
- **Why was the toxicity definition changed?** One member questioned why language in the toxicity definition was changed from the "ability of" to the "degree to which." She did not agree with the change. Ecology explained that the revised definition reflects the EPA definition. Another member said that he supports the revised definition.
- **"Manage, reduce, and eliminate" definition should be changed.** One member said that the "manage, reduce, and eliminate definition should be changed to "reduce and eliminate." Another member supported using "reduce or eliminate," not "reduce *and* eliminate." Both members agreed the wording should be consistent throughout the entire document.

Part III – PBT List and Criteria and Procedures for Revising the List

Section 300 - The Purpose of the PBT List

Advisory committee members had the following comments on the revised section:

- **Need to include reference to toxicity.** One member said that Ecology needs to include a reference to toxicity in section (1).
- **Why are DOH and biomonitoring not included in the intended purposes of the PBT list?** One member said that some advisory committee members raised the issue several times that the PBT list should guide DOH's biomonitoring efforts. She questioned why DOH is still not included in the intended purposes of the list and reiterated that it should be included. Rob said that adding DOH to the section would be a good addition.
- **Disagreement over the use of the PBT list.** One member was concerned that Ecology is reducing their ability to use the PBT list over the next decade. She said that there could be many different purposes of the list, separate from the Rule or a CAP. She suggested that Ecology include a Part e section stating that the PBT list should be "used in any way that is appropriate to protect human health and the environment." She said that as it is currently written, it precludes Ecology from using the list for any other purpose than those listed in Parts a-d and that there is a way to allow flexibility without imposing unknown consequences to business and industry. One member said that the current language does not limit Ecology in any way and that concerns can be addressed through CAPs which do not limit any action. Another member agreed and said that the purposes of the list as written in Parts a-d should not be changed. One member suggested that Ecology could re-word the section to say that "Ecology will primarily use the PBT list for," and then list the current uses. Ecology clarified that they do not think they are limited by the PBT list and that Ecology has the ability to address PBTs in other department programs.

- **Will the Strategy document have a different PBT list than the Rule?** Ecology clarified that they will update the PBT Strategy to reflect the PBT list that is in the final PBT Rule.

Section 310 - PBT List

Committee members had the following comments on the PBT list:

- **Metals should be handled separately.** One member said that metals on the PBT list should be handled separately and that she would submit suggested changes to Ecology.
- **Addition of the Categories section is an improvement.** Several committee members liked the addition of the Categories section. Dave Bradley explained that the categorization will occur separately from the Rule and will include a public comment period. One member pointed out that public comment associated with the categorization is not mentioned in the Rule.
- **Inconsistency in Rule revisions.** A member from the audience said that Ecology was inconsistent in the Rule with regards to revising the PBT list. He said that in section 310, Ecology states that they will update the list periodically, and in section 340 Ecology states that they will update the list every four years. He pointed out that the Administrative Procedures Act (APA) describes how Ecology or anyone can amend the Rule and that if Ecology specifies a review period they may potentially violate the APA. Ecology explained that they would like the Rule reviewed at least every four years and that similar language has been used in MTCA and other surface water quality standards. Other committee members agreed that section 310(4) needs to be consistent with 340(2).

Section 320 - Criteria to identify and add chemicals to the PBT list

Advisory committee members had the following comments:

- **Parent compounds should not be on the PBT list.** One member said that parent compounds should not be included on the PBT list; only the problem or degradation chemicals should be included. Another member disagreed and said that the PBT list should be reference for businesses to inform themselves about substances that may ultimately create problems. One member pointed out that Material Safety and Data Sheets (MSDS) tell the businesses which chemicals have harmful degradation products and said that parent compounds should not be included on the PBT list.
- **Only chemicals that meet PBT criteria should be on the list.** One member stressed that Ecology should only include PBTs on the list that meet the PBT criteria.

Section 400 - What is a CAP?

Advisory committee comments on this section included:

- **Part (1) should be consistent with the Introduction section (100).** Members agreed that the two sections should be consistent; however, members did not agree on how to make the sections consistent. Members will submit suggested changes to Ecology in writing.

Section 410 - What evaluation factors and processes will Ecology use to select PBTs for chemical action plan preparation?

Committee members had the following suggestions and comments:

- **Toxicity should be included in part 2.** One member said that Ecology should include the criteria for toxicity in part 2; he suggested adding a part C to the current section.
- **Disagreement over adding presence in Washington to the section.** One member said that the presence in Washington criteria should be included in part 2 and that Ecology should only develop CAPs for chemicals present in Washington. Another member said that the presence in Washington should not be discussed with toxicity and that it is dealt with in section 320 already.
- **It seems like Ecology is developing two rules.** One member said that it seems like Ecology is developing one rule for creating the PBT list and a separate rule for the CAP process. Ecology explained that throughout the advisory committee meetings there have been two sets of criteria: one for placing chemicals on the PBT list and one for developing CAPs. Dave also said that there are multiple purposes and uses of the PBT list and Ecology is attempting to bridge the gap between the multiple uses.
- **How many chemicals will be subject to CAPs based on the PBT list?** Dave Bradley explained that approximately 10-12 of the chemicals on the proposed PBT list would meet the criteria for CAP development.
- **Why did Ecology replace the word "shall" with "will?"** Ecology explained that the word "will" means the same as "shall" and that using "will" is consistent with current rule language.
- **Why is the half-life in water not listed in part 2(a)?** One member said that the chemical half-life in water should be included in part a. Ecology said they will add the half-life for water to this section.

Section 420 - What are the contents of the CAP?

- **Ecology should clarify section 1 part e.** One member said that Ecology should add a policy option to part e to manage chemicals to reduce exposure. Ecology explained that this policy option was covered in part e(iii).
- **Ecology should add language specifying that alternative products need to be safe.** A couple of members suggested that the Rule should include language specifying the importance of safe alternatives.
- **Do not use the word "manage."** Ecology should use words like "reduce and eliminate," as opposed to "manage."
- **Ecology should look at all of the PBT sources, not just "various" sources.** One member said that he does not want a "cherry-picked" life cycle analysis and that rather than looking at various sources of PBTs, Ecology should look at all available sources. Another member pointed out that the quality of information Ecology has will vary, however, it is important that all of the information is collected nonetheless.
- **Part 3, Economic Analysis, should be expanded.** One member said that Ecology should also expand the economic analysis to include the monetary impact of not taking actions. She said that there are tangible costs outside of evaluating impacts to health and the environment, such as clean up costs. Other members agreed that the cost of no action should also be included.
- **Economic analysis should include a timeline.** A member of the audience said that Ecology needs to establish a timeline, short versus long-term, to accurately do an economic analysis.
- **Use the words "toxicity effect" rather than "toxicological effects."** One member suggested that Ecology use "toxicity effect" in part 1(c) because the word "toxicity" is defined in the Rule.

- Use the word “rates” instead of “incidence.” Ecology should use the word “rate” in section 1(c) instead of “incidence” because disease prevalence should be considered and only applies if the word “rate” is used.

Section 430 - What process will Ecology use to develop CAPs?

Advisory committee members had the following suggestions for this section:

- Estimated costs should be consistent throughout the CAP. One member said that the cost estimations in the workplan/scoping phase (section 2) should be consistent with the economic analyses conducted throughout the CAP process.
- Ecology should present a summary of their response to public comments before the final CAP recommendations are made. One member asked if it was unreasonable for Ecology to publish a response to public comments before finalizing CAP recommendations. Ecology explained that it is important to the agency to respond to public comments and depending on the circumstance, they may follow-up with public comments before or after recommendations are made.

Public Comment

Public audience members commented throughout the meeting. Comments made during the meeting are reflected in these notes in the individual sections of the draft Rule (above).

Comments made at the end of the advisory committee meeting are captured below:

Bruce Herbert -Newground Social Investment. Bruce commented on the significant change in the investment arena that major institutional investors are bringing to the investment world. He said that several economic studies exist, including one by the World Resources Institute (WRI), that adopt a forward looking analysis to assess a range of future impacts. He said that investment advisors and analysts are looking at economic questions long-term. He explained that without considering long term impacts, what may be good for shareholders may not necessarily be good for others. Bruce encouraged the committee to put profits in a larger perspective in the PBT rule process and emphasized that postponement of regulation does not necessarily relate to a cost-benefit.

Jeremy Brown - Western Fishboat Owners Association. Jeremy has concerns about handling metals separately in the PBT list and is concerned about the degradation products of chemicals. He pointed out that there are some inconsistencies in the PBT Rule. He said that Ecology has not addressed chemicals in the Technical Background Information document consistently and said that the Mercury section does not address derivatives and compounds like the lead section. He stated that the economic analysis should also consider the impact of the absence of regulatory action on the fishing industry and its consumers.

Matthew Cacho - Health Building Network. Matthew said that businesses need frameworks to work within and that the PBT Rule should favor innovators that move chemical policies. He said that some businesses are not prepared to face change, while others such as building companies look at change as a vehicle for innovation. He said that these innovative companies deserve a rule that is on par with their excellence. Matthew would like public policy to encourage innovative businesses and said that businesses that fail will be replaced.

Janet Primomo - University of Washington - Tacoma. Janet is a professor in nursing at UW-Tacoma and has a background in community health nursing. She would like Ecology to incorporate the precautionary principle more throughout the PBT Rule. She said that the Washington State Nursing Organization has adopted the precautionary principle in their guidelines. She is particularly concerned about the impact of PBTs on infants and said there needs to be a broad view regarding who will share the costs of PBTs to society.

Joel Kawahana - Washington Trollers Association. Joel explained that he represents salmon fishermen in Washington State as well as the consumers who eat salmon. He said that his association cannot protect its consumers and he urged Ecology to think of salmon consumers in the PBT Rule process. He encouraged Ecology to give greater weight to bioaccumulation factor criteria for chemical species that will be consumed, such as chemicals that will end up in salmon. He also said that the Rule does not consider how Ecology will deal with external sources of pollutants.

Next Steps

Committee members' comments and suggested changes to the draft Rule should be emailed to Mike Gallagher by Friday, December 17th. Ecology will distribute the final changes made to the draft plan to the committee, as well as a copy of the cover letter they will send to the Governor. Ecology will also post the revised PBT Rule on their website. Greg explained that Ecology will keep the committee apprised of the next steps in the PBT Rule process.

Ecology thanked the facilitator and the advisory committee members for their work throughout the PBT Rule advisory committee process.

Meeting Adjourned